

June 22, 2016

Ms. Michelle L. Villarreal Deputy City Attorney City of League City 300 West Walker Street League City, Texas 77573

OR2016-14176

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 615209 (PIR# 6042).

The League City Police Department (the "department") received a request for case number 16-1723. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See id. § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531

S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See Whalen v. Roe, 429 U.S.589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. See Fadjo v. Coon, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See Ramie v. City of Hedwig Village, Tex., 765 F.2d 490 (5th Cir.1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. See Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157 (2004).

You seek to withhold the basic information under section 552.101 of the Government Code in conjunction with constitutional privacy. Because the information at issue relates to a deceased individual, it may not be withheld from disclosure based on her privacy interests. However, you state you notified the deceased individual's family of the request for information and of the family's right to assert a privacy interest in the submitted information. A member of the deceased individual's family has asserted a privacy interest in the information and objects to its release. After reviewing the submitted comments and the information at issue, we find the family's privacy interest in the information at issue does not outweigh the public's interest in the disclosure of this information. Therefore, the department may not withhold the basic information under section 552.101 of the Government Code in conjunction with constitutional privacy and the holding in *Favish*.

In summary, with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <a href="http://www.texasattorneygeneral.gov/open/orl\_ruling\_info.shtml">http://www.texasattorneygeneral.gov/open/orl\_ruling\_info.shtml</a>, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely, Claure Morris &

Claire V. Morris Sloan

Assistant Attorney General

Open Records Division

CVMS/dm

Ref: ID# 615209

Enc. Submitted documents

c: Requestor

(w/o enclosures)

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